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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/997,892	11/30/2001	Robert R. Keller JR.	5569/72312	4224
22242 7590 11/28/2007 FITCH EVEN TABIN AND FLANNERY 120 SOUTH LA SALLE STREET SUITE 1600 CHICAGO, IL 60603-3406			EXAMINER IP, SHIK LUEN PAUL	
			ART UNIT 2837	PAPER NUMBER
			MAIL DATE 11/28/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

09/997,892

Applicant(s)

KELLER, ROBERT R.

Examiner

Paul Ip

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11/30/2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-42 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Fitzgibbon et al (6,097,166 or 6,107,765 or 6,111,374).

With respect to claims 1-2,7-12,17-19, 30-33, and 37-40, the patents to Fitzgibbon et al disclose barrier controllers having a physical user interface manipulated by a user through a corresponding physical setting range having a first physical position corresponding to a first end, a second physical position corresponding to a second end, and at least one specific intermediate physical position between the first physical position end and the second physical position corresponding to the second end. Fitzgibbon et al defined the first end and the second end as the open position and the close position. Fitzgibbon et al disclose a learn mode (col.2 line 29) of the barrier. Fitzgibbon et al show in figure 2 a motor with measuring (Tachometer 110, Temperature sensor 120, Optical Obstacle Detector 90) at least one parameter that corresponds to operation of the motor to provide a parameter value. Fitzgibbon et al disclose using the parameter value to establish a specific force control value for different "binding locations", and assigning during the learning mode the specific force control value to a

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specific binding location of the physical setting range (open and close) for the force control as recited in the claims.

With respect to claims 3-6, 20-29, 34-36, and 41-42, Fitzgibbon et al disclose in the abstract and the specification that the control unit includes an automatic force incrementing system for adjusting the maximal opening and closing force to be placed upon the movable barrier during a learn operation. See the abstract.

With respect to claims 13-16, Fitzgibbon et al disclose a tachometer 110 coupled to the shaft 108 and provides a tachometer signal on a tachometer line 112 to the micro controller 84, the tachometer signal being indicative of the speed of rotation of the motor. See col. 5 for the tachometer 110 descriptions.

### ***Response to Amendment***

3. Applicant's arguments with respect to claims 1-42 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments filed on 7/9/2007, with respect to claims 1-42 have been fully considered and are persuasive. The Office action mailed on 1/08/2007 has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of the patents to Fitzgibbon et al (6,097,166 or 6,107,765 or 6,111,374).

### ***Citation of Pertinent References***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references cited on form 892 are barrier learn mode devices related to the invention.

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***Communication Information***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Ip whose telephone number is 571-272-1941. The examiner can normally be reached on Monday to Friday from 6:30 am to 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lincoln Donovan, can be reached on 571-272-1988. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Paul Ip  
Primary Examiner  
AU 2837

11/26/2007